

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Promoting Diversification)	FCC Docket No. 07-294
Of Ownership in Broadcast Services)	
)	
2006 Quadrennial Regulatory Review –)	FCC Docket No. 06-121
Review of the Commission’s Broadcast)	
Ownership Rules and Other Rules)	
Adopted Pursuant to Section 202 of the)	
Telecommunications Act of 1996)	
)	
2002 Biennial Regulatory Review –)	FCC Docket No. 02-277
Review of the Commission’s Broadcast)	
Ownership Rules and Other Rules)	
Adopted Pursuant to Section 202 of the)	
Telecommunications Act of 1996)	
)	MM Docket No. 01-235
Cross-Ownership of Broadcast Stations)	
and)	
Newspapers)	MM Docket No. 01-317
)	
Rules and Policies Concerning Multiple)	
Ownership of Radio Broadcast Stations)	
in Local Markets)	MM Docket No. 00-244
)	
Definition of Radio Markets)	MM Docket No. 04-228
)	
Ways to Further Section 257 Mandate		
and to Build on Earlier Studies		

Comments of Engle Broadcasting

In its NPR the Commission seeks comments on its authority to adopt rules requiring must-carry of Class A television stations to promote programming diversity and localism.

Engle Broadcasting strongly supports the comments of the Community Broadcasters Association and must-carry for Class A stations. Engle

Broadcasting is licensee and operator of WPSJ-LP, a Class A station licensed to Hammonton, New Jersey. Engle Broadcasting is certified as a Veteran-Owned Small Business by the Veterans' Administration.

The Commission has the authority to require must-carry of Class A stations. In fact, in the Cable Television Consumer Protection and Competition Act of 1992, Congress charged the Commission to "encourage cable operators to carry LPTV stations."¹ This is the opportunity to fulfill a Congressional mandate.

Government has Interest in Keeping Local Class A Service

Both Congress and the Commission have repeatedly stated their desire for the Class A service to succeed and be a means of promoting a diversity of ownership and localism in broadcasting. The LPTV service was set up to promote ownership diversity. Originally, only LPTV applicants who had no other broadcast interest were allowed to apply for construction permits.

It was Congress' intent when creating the LPTV service to promote local television with diverse local programming; Congress again reinforced this position when the Class A service was created. Congress mandated localism in the Class A service. Regulations require Class A stations maintain a studio within the Grade A contour and must originate a minimum of 3 hours of local programming per week. Most Class A stations, if they don't do more than 3 hours per week, they would like to; market forces prevent them from producing more. It is clear that Congress' intent was and is for Class A stations to succeed in their Congressional mission to deliver diverse important local programming to their intended audience.

The US Small Business Administration has recognized that LPTV/Class A stations bring diversity of ownership and programming to the broadcast industry and fulfill an important role in providing community oriented programming.²

Carriage on Cable and Satellite Necessary to Support Local Programming

Nationwide cable penetration is at 58%.³ In our market, Philadelphia, combined cable and satellite penetration is now 94%. This leaves about 6% of

¹ Cable Television Consumer Protection and Competition Act of 1992, Sec. 2(a)(21)

² US Small Business Administration, Office of Advocacy MM Docket 99-292

³ NCTA website

our market to view us over the air. This is not enough to support the high cost of living and doing business in New Jersey.

Our programming is advertiser supported. Cable is so entrenched in this market that even local retail advertisers will not buy ads unless the program is on cable. We purchase leased access time on a program by program basis, so that our local programs may be viewed by local residents. This is only marginally feasible economically because we cannot charge rates for our advertising in our programs that are significantly higher than our competitors. Yet unlike our competitors, we must pay for cable carriage as well as transmission costs. This disadvantage hurts us severely and limits the amount of local programming we can do.

No Cable Carriage for WPSJ-LP

There is only one cable operator in our market. This operator has consistently refused to negotiate with us for carriage. We do not even receive the courtesy of return telephone call. We send unsolicited information on our station and the local programming we produce, yet our calls are referred to voicemail and our messages are not returned.

Cable Does Not Carry Class A Stations in 90% of Country

In the 16 years since the Act, there has been no “encouragement to carry LPTV stations” and cable has not voluntarily carried Class A stations without must carry rights.

The current must carry rules for LPTV are the result of an 11th hour political compromise designed to benefit only a very few LPTV stations – those located in the most remote areas of the country.⁴

90% of the population of the country lives within the top 160 MSA's. Thus 90% of the country do not have a cable operator carrying a LPTV or Class A station under must carry.

⁴ S-12, the Senate version of the Cable Television Consumer Competition and Protection Act of 1992 provided for must carry for LPTV stations in all markets. The highly restrictive limitations; LPTV station and cable system must be outside the top 160 MSA; the population of the station's community of license must be under 35,000 and there must be no full power station licensed to the county or political subdivision in which the LPTV station and cable system were located, were added in the conference.

Cable operators are not carrying independent Class A stations in the top 160 MSA's.

Less than 2% of all non-network Class A and LPTV stations that do not have must carry rights are voluntarily carried by the cable systems in their coverage area.⁵

Clearly, the cable industry does not share the Commission and Congress's desire to promote diversity of local voices and ownership.

Cable Not Harmed by Must Carry

Must Carry does not harm cable. Currently cable channel capacity averages 300-500 channels. The addition of 3 or 4 Class A stations per market will not be a significant impact on a cable system. It is less than one percent of total cable capacity.

Since must carry in the Cable Act of 1992 was affirmed, cable has grown exponentially. Total industry revenue for 2007 is over \$102 billion.⁶

Class A Stations Should be Subject to Must Carry

With one exception, Class A stations are subject to all Part 73 rules including fines and penalties. In fact, Class A stations are subject to more regulations than full power stations in that Class A's must fulfill a three hour per week local programming requirement.

It is consistent with the existing statutory framework that Class A stations be classified 'full power' and added to the Table of Allotments as suggested by the Community Broadcasters Association (CBA).⁷

A powerful member of Congress agrees that the FCC has authority to adjust the Table of Allotments to include Class A stations. Rep. Oxley (R-O.) said it's "technical question" best left to FCC as expert agency to determine how LPTV fits into allocation pattern.⁸

⁵ Source Community Broadcasters Association

⁶ NCTA website <http://www.ncta.com/Statistic/Statistic/Statistics.aspx>

⁷ See CBA Comments, pg. 3-5

⁸ Television Digest with Consumer Electronics April 19, 1999

The NAB concurred that the time to address this issue is when the digital transition is "much further along."⁹ The digital transition is nearly complete and now is the appropriate time to resolve this problem.

Engle Broadcasting strongly suggests the Commission adopt the CBA proposal.

Technical Considerations

When implementing must carry for Class A stations, the Commission should consider in cases where a cable operator has established a regional headend where the operator requires all stations to deliver their signal, if the cable operator uses fiber or other means to deliver one station to the headend, it must do so for all stations at that headend.

The Commission should also include language that would allow a station to use baseband video (microwave, internet, UHF STL, common carrier fiber, etc.). If a station has a problem with propagation at a particular cable headend site, allowing that station to use baseband video would allow carriage otherwise denied.

This is consistent with the current FCC Rules for must carry for both full power, 47CFR75.55c3, and low power stations 47CFR75.55d and is common practice in the delivery of broadcast signals.

Conclusion

Class A stations have brought diversity of ownership and programming to television yet the effect of such diversity has been restricted by cable operators who have refused to carry such stations on their systems and prevented the public from seeing their diverse views.

Congress has found that mandatory carriage on cable of local television stations is necessary to ensure diversity of local programming and ownership. Local programming cannot be sustained by a business model relying on payment for cable carriage

⁹ NAB Exec. Vp James May, Warren Group Copyright 2000

Class A stations have the largest percentage of minority and small business ownership in the broadcast industry.

The CBA proposal for cable carriage by adding Class A stations to the Table of Allotments is needed to ensure viewers freedom of choice and promote diversity of ownership and local programming.

For these reasons, Engle Broadcasting respectfully requests the Commission expeditiously enact rules to provide mandatory cable carriage for Class A stations.

Respectfully submitted,

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